UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALFONZO WILLIAMS,

Defendant.

Case No. 13-cr-00764-WHO-1

ORDERS REGARDING ALFONZO WILLIAMS'S VARIOUS DISCOVERY MOTIONS AND MOTION FOR A BILL OF PARTICULARS

Re: Dkt. Nos. 359, 362-367, 369, 371, 398-400, 402, 392-393

INTRODUCTION

Defendant Alfonzo Williams filed a series of discovery motions that the other defendants joined to address alleged deficiencies in the government's production to date. All of the joinders are GRANTED. Williams also moves for a detailed bill of particulars. Based on the briefing submitted and counsel's argument at the June 4, 2015 hearing, I GRANT Williams's discovery motions in part and DENY them in part, and DENY his motion for a bill of particulars.

The government agrees that defendants are entitled to some of the discovery Williams is requesting—in fact, it represents that much of it has already been provided. There is not complete agreement with the government's representations about discovery, which may stem from the large amount of discovery produced and lack of effective communication between the parties. In this Order, I identify representations that the government has made and set forth a protocol that will hopefully address the communication (if not substantive) problems.

Williams seeks other discovery that the government objects to providing because there is no legal requirement that it do so. The disputed discovery may very well help the defendants prepare for trial, but I agree with the government that much of it is protected from discovery and,

absent case law that supports the defendants' positions, I will not require that it be produced earlier than the dates set forth in the Order Setting Pre-Trial and Trial Schedule. Dkt. No. 353.

I. GENERAL DISCOVERY ISSUES

A. Discovery production protocol

The government has produced a lot of discovery in this case. Fourteen months ago, it represented that it was providing eight terabytes of data to the defendants; it is clear that as the defendants have identified more relevant information, either formally or informally, and as the government continues its investigation, significantly more disclosures have been made since.

At the outset of this matter, I authorized compensation for a discovery coordinator to assist the defendants. It was my assumption that this person would be in a position to iron out any difficulties in locating documents that have been produced. However, Williams and other defendants complain that searching for relevant documents that the government has produced is akin to looking for a needle in a haystack. That impediment drives up the cost of this case and muddies the resolution of these motions.

One way to address this problem is to order, as the government offered at the hearing, that the government's paralegal assist the discovery coordinator in locating the categories of documents sought by the defendants that have been produced. SO ORDERED. The discovery coordinator should be a conduit for questions that defense counsel have about the discovery, and the government's paralegal should work collaboratively with the discovery coordinator to resolve any questions.

As a matter of national concern, the government has an interest in conserving CJA funds. In this case, it has an interest in avoiding motions for information that it knows it has provided. One way to accomplish that is to be more transparent. It was surprising to learn at the hearing that the letter notifying the defendants that material has been delivered to Colour Drop, the repository for the documents, provides scant description of what has been delivered besides Bates stamp numbers. It would be useful to include a more helpful description of the categories of information provided. If the government has a general index of disclosed materials that would assist the defendants in locating documents, it should make the index available. I am not suggesting that the

government's paralegal provide the government's work-product to the discovery coordinator. But the paralegal should be reasonably specific about the organization of the documents produced and the general location of requested material.

B. Native format for phone records

At the hearing on April 3, 2015, the government agreed to determine how best to provide searchable phone records to the defendants. Figuring out how to do so apparently took much longer than anyone anticipated. During the hearing on June 4, 2015, the government indicated that virtually all of the problems have been resolved and that any remaining hurdles would be quickly overcome. I asked if this would be concluded within the week; because the person with knowledge was not present, counsel could not make that representation. I directed that this be a matter of the highest priority. If any difficulties remain in providing the defendants with searchable phone records, within seven days of the date of this Order I ORDER counsel for Williams and the government to submit a joint five-page letter to me describing what the problem is. This issue is important and it should not linger.

II. WILLIAMS'S SECOND DISCOVERY MOTION [Dkt. No. 363]

A. Agreed upon discovery

Williams's Second Discovery Motion seeks seven categories of information. The government represents that it has provided everything it has concerning (1) all of Williams's statements, (2) all logs concerning surveillance of Williams's house, (3) all non-Jencks *Brady* material and (4) all Rule 16 and non-Jencks Act statements regarding racketeering acts alleged in the Second Superseding Indictment and one racketeering act that was described during the hearing that is not charged. The government explained that the Second Superseding Indictment includes thirty five overt acts that provide the defendants with the scope of the conspiracy alleged. With the exception of one additional act that counsel identified at the hearing, and for which discovery has been provided, at this time the government is not aware of other acts that it intends to prove at trial.

B. Disputed discovery requests

Similar to the issue raised by Elmore in connection with the government's motion for

reconsideration, Williams wants me to find that the government and the San Francisco Police Department are in an agency relationship. The purpose is to ensure that all *Brady* information in SFPD's possession is disclosed. As is set forth in the order on the government's motion for reconsideration, the government has a duty to turn over all *Brady* material that it has in its possession and to seek out and obtain *Brady* material in the possession of SFPD that it knows about or has reason to believe that it exists. Dkt. No. 406 at 8-9. The government cannot turn a blind eye to *Brady* material, but neither is it required to hunt for documents for which it has no reason to know about. I do not have the power to require more of it.

Elmore's counsel referenced the gang files in SFPD's possession, which provide a good example of how the interplay between the government and SFPD should work. The government says that it is aware of the gang files, that there are not many of them concerning the defendants, and that they have been produced. These files are obviously relevant, and as a practical matter, SFPD should have provided them to the government already. But the defendants can also verify that such production has taken place by issuing their own subpoena to SFPD, recognizing that if additional documents are identified they will likely be first given to the government for review. For this specific example, I ORDER that the government renew its request to SFPD to ensure that it has obtained all the relevant gang files and that it produce those records in accordance with its obligations.

As the investigation continues, the government continues to make recordings of certain phone calls made from the jail by the defendants. The government is producing additional recordings of the defendants on a rolling basis as each recording is delivered to it and reviewed. Williams referenced a problem in *United States v. Ortiz*, No. 12-cr-00119 (N.D. Cal.) where late disclosure of numerous jailhouse recordings necessitated a lengthy continuance of the trial, and asked for disclosure of the recordings within thirty days of the government's receipt of the recording. I will not set a hard and fast deadline because I lack information on the process for the review and who is doing it, but thirty days does not seem unreasonable. I will require that government timely produce those recordings, and to alert me at the next hearing if there are any problems in the production of the recordings.

For the foregoing reasons, I GRANT in part and DENY in part Williams's Second Discovery Motion.

III. WILLIAMS'S MOTION FOR DNA AND PHYSICAL EVIDENCE [Dkt. No. 364]

A. Agreed Upon Discovery

Williams seeks a detailed list of information to accompany the disclosure of DNA evidence. The government responded that it has already produced all DNA reports reflecting the work performed and the resulting conclusions and opinions. The government also represents that as it completes its DNA analysis, it will provide defendants, on a rolling basis, both the DNA evidence and "discovery packages," which contain the entire file of the testing laboratory that relates to the particular DNA examination performed.

B. Disputed Discovery

Williams's response objects that the discovery packages do not contain important information, but did not explain why. At oral argument, his counsel explained that the discovery packages do not contain vital impeachment material, such as the standard operating procedures for the lab and contamination records. Otherwise, he did not specify what categories of information were not included in the discovery packages other than "all of them." The government replied that it was well aware of its *Brady* and *Giglio* obligations and that it would produce all impeachment material.

Without a better record, I cannot determine that the discovery packages are insufficient. I agree that the standard operating procedures are relevant and that contamination records should also be produced. So I will GRANT this motion in part and DENY the remainder without prejudice.

IV. WILLIAMS'S MOTION FOR PHONE RECORDS [Dkt. No. 362]

A. Agreed Upon Discovery

In addition to seeking searchable telephone records, which I discussed in Section I.B, above, Williams also seeks cell tower information. The government represents that it has provided the underlying cell tower information and has agreed to turn over the other cell tower information as soon as its expert has completed his analysis, no later than the date of expert disclosure. The

government has also disclosed the line sheets that provide significant information concerning the phone records.

B. Disputed Discovery

Williams complains that the analysis of the cell tower information is potentially quite time-consuming and that if it is not turned over immediately, it is possible that the trial would need to be delayed. The government represented that it would provide the information as soon as its expert had completed his analysis, and that it would be prejudicial to turn it over when the analysis is incomplete. I agree with the government.

Williams also seeks documents showing the telephone numbers from the jail the government wants to tap and all recordings of informants and other alleged gang members, whether or not the recording discloses investigations of other crimes not at issue here. Williams also wants copies of any informal requests by the government to other law enforcement agencies that identify phone numbers that the government is interested in, and the basis for making the requests to those agencies.

While it is certainly the case that the government must turn over applications to a court for search warrants (and the government represents that it has done so in this case), I am unaware of any authority or precedent allowing defendants access to communications between law enforcement entities. If all letters or emails between law enforcement agencies concerning investigations were required to be produced, it would negatively impact public safety and the ability of those agencies to communicate effectively. Courts deny requests for communications between law enforcement agencies as not material or, assuming materiality, as protected under Federal Rule of Criminal Procedure 16 (a)(2). *See, e.g.*, *United States v. Ghailani*, 687 F. Supp. 2d 365, 369 (S.D.N.Y. 2010) (memorandum similar to an order of proof regarding defendant provided by U.S. Attorney's Office to Department of Justice was protected from disclosure under Rule 16(a)(2)); *United States v. Williams*, 792 F. Supp. 1120, 1132 (S.D. Ind. 1992) (denying request for "[a]ll communications, written or oral, with any state or local law enforcement personnel pertaining to the prosecution of this case" as protected from disclosure under Rule 16(a)(2), even assuming it was material).

Although Williams argues that he cannot effectively use the information he has been provided to investigate this case, the government points out that the Second Superseding Indictment lists dates for certain of the overt acts and offenses charged, that the line sheets contain considerable information about the calls, and that recordings that have been produced also list the telephone numbers called from the jail. The ability to search the phone records electronically will make them easier to work with. While there is no doubt that the disclosures sought by defendants would make it easier to prepare their defense, it is an exaggeration to argue that there is no way to prepare the defense in this case. Without some support in the case law, I will not make the broad order sought by defendants.

Williams is concerned that the government is "cherry-picking" the recordings that it is providing to the defendants and he wants all of the recordings of informants and other gang members. The government does not receive recordings from all of the calls made by the defendants or the informants, and represents that it has disclosed or will disclose the relevant recordings in accordance with the schedule set forth in the Order Setting Pre-Trial and Trial Schedule. Dkt. No. 353.

In light of the above, I GRANT Williams's motion regarding the "agreed upon" discovery listed above and DENY the remainder of the motion.

V. WILLIAMS'S MOTION FOR WIRETAP INFORMATION [Dkt. No. 365]

A. Agreed Upon Discovery

Williams seeks all wiretap information and asks that the government preserve and produce all wiretaps and wiretap-related information pertaining to gang participants. The government represents that Williams has all the wiretaps and that it will preserve any wiretaps and wiretap-related information pertaining to gang participants that for some reason have not been produced. It also represents that it has produced all wiretap applications, affidavits and orders. And it will produce interviews, reports of surveillance, reports to introduce informants or undercover agents into the gang pursuant to the Order Setting Pre-Trial and Trial Schedule. Dkt. No. 353.

B. Disputed Discovery

The government asserts that probable cause is not required to obtain pen register data

because it is not a 4th Amendment search. Williams does not argue to the contrary. Similar to the discussion in section IV.B. above, there is no authority or precedent cited by Williams that the government must produce its requests to obtain the pen register data and I will not require it here. Accordingly, I GRANT Williams's motion with respect to the "agreed upon" discovery listed above and DENY the remainder of the motion.

VI. WILLIAMS'S MOTION FOR BILL OF PARTICULARS [Dkt. No. 359]

As discussed in the Order Granting Elmore's and Heard's motion for bills of particulars, an important purpose of a bill of particulars is to avoid surprise at trial. Dkt. No. 406 at 1-4. The factual theory of the prosecution must be disclosed in the indictment and through discovery—if it is not, a bill of particulars is appropriate.

Williams stands in a different position than Elmore and Heard. The theory of prosecution against him is clearly laid out in the indictment, and he has a great deal of evidence concerning the government's case against him. Accordingly, while the detailed interrogatories he poses on each portion of the indictment that mentions his name would undoubtedly help him prepare for trial, they are not necessary to explain the government's theory of prosecution. For this reason, Williams's motion for a bill of particulars is DENIED.

IT IS SO ORDERED.

Dated: June 23, 2015

WILLIAM H. ORRICK
United States District Judge

United States District Court
Northern District of California